IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 526 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMRISHBHAI MANUBHAI BRAHMBHATT & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR AD SHAH for Appellant(s) : 1,1.2.2 - 2,2.2.1
MR AJ DESAI, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 10/05/2007

CAV JUDGMENT

1. Both the appellants-original accused Nos. 1 and 2 have been held guilty of the charge of offence punishable under Sections 7, 12, and 13(1)(d)(i) and

(ii) read with 13(2) of the Prevention of Corruption Act, 1988 (herein after referred to as the 'Act' or 'the PC Act'),by the ld. Special Judge, Ahmedabad in Special Case No.8/1990 vide judgment dated 22.03.1993. Both the accused, vide impugned judgment, are directed to undergo S.I. for period of 2 years and fine of Rs.1,000/- and to undergo in default punishment for a period of 2 months for the offence punishable under Section 7 of the PC Act. Both the accused are again asked to undergo S.I. for period of 2 years and to pay fine of Rs.500/- and to undergo in default S.I. for period of 2 months for the offence punishable under Section 12 of the Act. Both these accused have been imposed S.I. for period of 2 years and to pay fine of Rs.1,000/- and to undergo in default punishment of S.I. for the period of 2 months punishable under Section 13(2) of the PC Act. Though, both the accused were asked to undergo different punishment and to pay fine for all the three offences each, the Court ordered the substantive sentences to run concurrently. The Court has also passed some orders for muddamal articles at the conclusion of the trial in the order of conviction and sentence. The same has been assailed by present appeal preferred under Section 374 read with Section 376 of the Code

of Criminal Procedure. The original accused No.1 was, at relevant point of time, serving as senior Clerk at Octroi Checkpost, Odhav and accused No.2 was Junior Valuation Officer at the very Octroi checkpost. Both the accused have died pending this appeal. However, vide order dated 21st February, 2000 passed in Criminal Miscellaneous Application No.6480 of 1999 Amrishbhai Manubhai Brahmbhatt has been permitted to continue the present appellate proceedings as per scheme of Section 394 of the Code of Criminal Procedure. Death Certificate of deceased accused Manubhai was also produced. In the same way, son of original accused No.2, Dilipbhai Motibhai Patel is also permitted to continue the present appellate proceedings vide order dated 14.07.2005 as per orders passed by this Court in Misc. Criminal Application filed by him in that regard.

2. Mr.A.D.Shah, learned advocate for the appellants and learned APP Mr.A.J.Desai for the State have been heard at length. The trap incident is of 24th August, 1989 and the same was led by police with the help of complainant Dabhaibhai Kavabhai. The gist of the case of the prosecution is reflected in the charge framed by the Trial Court vide Exh.4. It is

alleged that on 24th August, 1989 at about 7.15 AM. when both the accused were on duty at Octroi Checkpost, Odhav, the complainant, Dabhaibhai Kavabhai came to the Octroi Checkpost with a Truck loaded with wood. At that time, accused demanded bribe / gratification for under-valuation of the goods and thereby determined less amount of Octroi payable than the actual that could have been recovered against the goods imported within the Octroi limits of Ahmedabad Municipal Corporation. The amount of demand is Rs.20/- for showing favour by indicating less value of the price of the goods that was loaded in the Truck and it was possible only, if both the accused have decided jointly and under a connivance. According to prosecution, the Police Officer of ACB had information about the Municipal Employee working at Octroi Checkpost, Odhav accepting gratification when the goods are being imported / brought within the city Octroi limit.

3. In view of this information, ACB Police Inspector, Mr.Solanki went at some distance from the Octroi Naka, Odhav prior to the time when the trap was carried out and stopped one truck bearing

registration No.GTY 6185 which was proceeding towards city of Ahmedabad. It was alleged that about 200 mounds of wood which is used in making furniture and 75 mounds of wood that can be used as fire wood was found in the truck. The complainant Dabhai Kavabhai and driver Muradmiya Irshadmiya were questioned by P.I. Mr.Solanki of ACB and the complainant informed Mr.Solanki that employees working at Octroi Checkpost, Odhav were charging / accepting gratification at the time of transporting / bringing goods within the limits of city of Ahmedabad.

4. Thereafter Mr.Solanki requested complainant Dabhai and asked him as to whether he would like to participate in the raid and as the complainant expressed his willingness, P.I.Mr.Solanki arranged for raid.

5. P.I. Mr.Solanki asked complainant to produce Rs.130/- which was to be given as illegal gratification and thereafter, anthracene powder was applied on all the currency notes of Rs.130/- in presence of complainant, panchas and members of raiding party demonstrating the test of anthracene powder and its effect and thereafter, the raiding

party was asked to proceed towards Octroi Checkpost, Odhav. It is the case of the prosecution that the complainant had started with his loaded truck on 23rd August, 1989 and had reached Village Kathlal at about 08.00 p.m. on 23rd August, 1989. They stayed overnight at Kathlal at the residence of the Truck owner Muktarbhai Kasambhai and thereafter, they started at about 05.00 a.m. in the morning with Driver Muradmiya Irshadmiya from Kathlal and when the Truck had reached the Kathlal cross road, P.I. Solanki had stopped his truck. Thereafter, at about 06.00 a.m. i.e. on 24th August, 1989 complainant and panch no.1 entered the Octroi Checkpost and met the accused No.1. The accused No.1 made inquiries about the nature of the goods carried in the Truck and its approximate weight. According to complainant, he had informed accused No.1 that it is wood weighing about 300 mounds and thereafter, the accused No.1 filled-in the some of the part of the receipt and directed the complainant to approach accused No.2-the Valuation Officer. It is alleged that the accused No.2 told the complainant that though, according to him, the wood is weighing about 300 mounds, he will not write the exact weight of the wood loaded in the Truck as otherwise the valuation would be high for Octroi

purpose and asked complainant that for that work he will have to come in terms with accused No.1 i.e. Senior Clerk. As the complainant was directed to contact accused No.1, the complainant approached accused No.1 and, at that time, accused No.1 told the complainant that he is preparing the receipt for only Rs.60/- but he will have to pay Rs.20/- more for doing so and thus the case of the prosecution is that accused No.1 called upon complainant to pay Rs.20/- as illegal gratification and accordingly, he prepared the receipt for the Octroi charges. It is further his say that the complainant took out the amount of Rs.80/- from the currency notes of Rs.130/- that were kept in his pocket and paid the same to accused No.1. The panch witness who was accompanying the complainant on payment of the amount, gave pre-arranged signal and the raid was carried out in a couple of minutes. It is alleged that accused No.1 was caught red-handed accepting illegal gratification and the amount was recovered with the assistance of second panch from accused No.1. After experiment of ultra-violet lamp and tallying of the currency notes with the number of notes mentioned in the first part of the panchnama, PI Mr. Solanki recorded the complaint of Dahyabhai Kavabhai. The

police after completing investigation, obtained sanction from the Competent Authority to prosecute the accused for the alleged offences and submitted chargesheet on 06.03.1990. The raiding party were satisfied about number of muddamal currency notes mentioned in the panchnama and also as to the presence of anthracene powder marks on the hands of the accused No.1 and also on the relevant document, namely, receipt book. The second part of the panchnama was drawn and P.I. Mr.Solanki also recorded the complaint of Dabhaibhai Kavabhai. On conclusion of the trial, learned Special Judge, vide impugned judgment, has held both the accused as guilty for the aforesaid offence.

6. The accused have been examined under Section 313 of Cr.P.C. and according to both the accused, they have been forcibly implicated. Both of them have denied the case of the prosecution about the alleged demand of Rs.20/- as bribe amount. It is the say of the accused that they have never attempted to under value the goods than their actual market value. According to accused No.1, he had demanded only Rs.60/- as Octroi charges and the complainant-accused himself took out a bunch of currency note of Rs.20/-

and had placed them on a table, he had issued receipt at Exh.12 and as such, there was no demand or acceptance of bribe by him.

7. Over and above, the defence of the accused No.2 is that his duty is to verify the valuation of the goods and on the basis of that, the valuation Octroi charges are required to be calculated at the counter and in accordance with the rate prescribed by the corporation and the payment is to be made before cashier. It is the say of the accused No.2 that when the bill of purchase was not produced, the party is called upon to fill in form 'F' and on that basis Octroi charges are assessed. The party is under obligation to produce a regular bill and upon production of such regular bill, the final amount of Octroi payable is determined. He had not served earlier at Odhav Octroi Naka and had joined duties at Odhav Octroi Naka approximately one and half months before the incident and he was not knowing accused No.2. The learned Trial Judge has not accepted the defence plea and has observed that both the accused have failed in rebutting the presumption raised.

8. According to Mr.A.D.Shah, learned advocate

for the appellants accused, the order of conviction and sentence is bad and illegal. The learned Trial Judge has ignored the basic principles of appreciation of evidence and as recorded finding on certain surmises. The ld. Trial Judge has also erred in reading some part of evidence which is there on record. In cases of bribe and running trap where the punter is asked to assist the Officer, who had actually received the information about the corrupt practice and activities, the Court should appreciate evidence from all possible angles including the scope of false implication of the accused persons because in such cases the trap officer is highly interested in the success of the trap and the complainants of such cases are put under pressure so that the falsity of the trap may not be exposed. In all running trap cases where there being no previous demand made by the accused which can be said to be specific, the Courts are asked to assume that the information received by the trap Officer is genuine. Accused No.1 of course was a public servant, but after all he was serving at an Octroi Checkpost and was supposed to accept the currency notes tendered to him in the nature of Octroi charges. In present case, Mr.Solanki had proceeded to assume that bribe amount is being

accepted at Odhav Octroi Naka and therefore, he was tempted to arrange the trap. P.I. Mr.Solanki had joined the office of P.I. ACB on 26th June, 1989 and had arranged the present trap on 24th August, 1989 after about 2 months and it has come on record that this was his first trap. It is obvious that failure of the Trap would be a matter of great shock or disappointment for Mr.Solanki and the learned Trial Judge ought to have evaluated the evidence and the defence plea simultaneously and keeping in mind all probabilities including one such probability i.e. innocence of the accused No.2. When the case of the prosecution is that Investigating Officer had information that 23rd August, 1989 that Officers of Odhav Octroi Naka were showing favour to such importers by demanding less amount of Octroi charges by not evaluating the goods brought within the Octroi Limits of Municipal Corporation and seeking the bribe amount, Mr. Solanki arranged the trap. So, evidence of Mr.Solanki ought to have been appreciated as evidence of a highly interested person. It is settled law that Investigating Officer who is in charge of arranging the trap is/are *“trap witness and his evidence cannot be equated with an evidence of an independent witness not interested otherwise in the*

result of the case". For success of the trap Mr.Solanki sought assistance from the Office of the District Collector on 23rd, the employees were called as panch from District Collector Office had been to the Office of ACB P.I. Mr.Solanki and they had reached to the office of Mr.Solanki at about 12.30 a.m. i.e. immediately after midnight of 23rd. When it emerges that both the accused were there on duty during night hours and there is nothing on record to show that they had just taken over the charge of Octroi Check Post from the other employees, the learned Trial Judge ought to have thought why running trap could not be arranged immediately after 12.30 a.m. and why Mr.Solanki remained inactive till morning at 5.00 a.m. of 24th August, 1989,

9. According to Mr.Shah one vital document, namely, Import Bill Exh.11 has not been correctly appreciated. The wood of two different qualities were loaded in the Truck and the value was estimated at Rs.3000/-. It is the evidence of the complainant and even prosecution does not dispute this version of the complainant that after raid, the entire truck load of wood was taken to one Hinglaj Timber Mart, there the value of the goods was assessed as Rs.2975/-. Even as

per the case of the prosecution, the correct value of the goods was not more than Rs.3000/-. There was no scope for the accused in such a situation to raise demand against alleged facility as assessing less value of the goods entering into the city limit. It is neither the case nor it is evidence that during conversation the accused had insisted that though the value of the goods is about Rs.3,000/- they would put much higher value than the actual value and the complainant shall be compelled to pay higher amount of Octroi than actual leviable and for not doing so, and putting the correct value of the goods loaded in the Truck, the complainant should part with gratification. The document at Exh.11 has been relied on by the learned Trial Judge to link the accused with the crime but on the contrary, it was required to be observed that value shown of Rs.3,000/- in the document Exh.11 if read in reference to the ultimate value assessed by an independent trader / purchaser of the material, it destroys the case of the prosecution. There was no scope of showing any favour to pay the less Octroi and charge the bribe amount for showing such favour.

10. The next point pressed by Mr.Shah is that

rate of Octroi was 2% of the goods. This fact is an undisputed fact. On the contrary, it is the case of the prosecution that complainant was otherwise bound to pay Rs.60/- as Octroi against the value of Rs.3,000/- at the rate of 2%. Exh.12 shows that Rs.60/-was charged. The complainant was not carrying any document as to the value of the goods that was being carried in his truck. The complainant was under obligation to produce reliable documentary evidence about the value of the goods and on the strength of such documents for determining the Octroi charge actually leviable, Octroi charges was to be assessed and recovered after adjusting the amount paid on the strength of the value shown in format. This is not the case of permitting entry of goods being brought in within the said limits of *“Pakka Bill”* showing the correct value of the goods. The learned Trial Judge has not concentrated on this aspect.

11. The next point pressed by Mr.Shah is regarding defence of the accused and also case of the complainant who had placed currency notes on table at the time when accused No.1 was preparing Octroi receipt and as soon as the receipt was handed over to the complainant, agreed signal was given and raiding

party rushed into the Octroi check post and at that very moment, accused had picked up, innocently, the currency notes lying on the table for the purpose of counting. When it is the say of the prosecution that all notes were of Rs.20/- denomination, whether the notes put on by the complainant are three or four is the fact which the accused No.1 could have realised only on counting folded bunch of notes. Adding of one currency note would not make much difference in the thickness of bunch of currency notes. The placement of one more currency note was nothing but a surreptitious placement of a note of Rs.20/-. The panch witness had at first stage admitted in cross-examination that when Mr.Solanki entered Octroi check post along with the raiding party, the accused No.1 had currency notes in his hand and panch had taken the currency notes from the hand of the accused and had counted the same. When panch counted the currency notes whether they were Rs.60/- or Rs.80/- was again a question which requires appreciation afresh by this Court.

12. There is no case against the accused No.2 which is one of the main submissions of Mr.Shah. Accused No.2 even remotely had not demanded any

amount and was not even a party to the alleged demand. It is not the case of the prosecution that as a matter of course, accused persons were recovering Rs.20/-irrespective of genuineness of the value of the goods loaded in a vehicle or in case where *"Paka Bill"* is also with the Truck driver. Even in such a situation, the accused No.2 ought not to have been linked with the crime. Accused No.2 was a Valuation Officer and had authority to determine the value of the goods and on approximation of Rs.60/- is mentioned in the import bill at Exh.11. For the sake of argument, it is accepted that the value was assessed by the accused No.2 at Rs.3,000/- then his assumption of the value was found correct as mentioned earlier but the entire truck load was given to one Timber Mart located in nearby area of the check post at the value of Rs.2975/-. When the accused No.2 has not participated in any manner whatsoever even in pursuing the complainant to pay Rs.20/- more, then he could not have been connected with the offence punishable under Section 7,12 and 13(b) of the Act because all these three offences are substantive offence and as such, there was no clear charge against accused No.2 of abetment. Neither there is any conviction nor conviction has been

recorded against accused No.2 for abeting accused No.1. The concept of *"conclusive establishment of the charge"* was imposed by the learned Trial Judge in present case is in nutshell the submission of Mr.Shah in general and in reference to accused No.2 in particular. The accused are not supposed to prove the defence plea beyond doubt is the settled legal position and accepted principles of great jurisprudence. The accused are supposed to show the probability acceptable to a reasonable and prudent man. When the say of the accused No.1 before the Court is that complainant placed four currency notes instead of three notes and therefore, he had accepted the amount and was counting the same, the raiding party caught him then why this explanation should not be accepted as a probable explanation. The explanation should appear to be probable one. Accused No.1 was otherwise entitled to accept the currency notes being a only person present. He had prepared the receipt and it was given to the complainant. When this receipt was prepared is again a matter of evaluation but the accused No.1 could have been given benefit of doubt.

13. One more technical submission made by

Mr.Shah is that test of anthracene powder mark does not conclusively establish the acceptance of bribe amount of Rs.20/- because the complainant was supposed to pay Rs.60/- to the accused. The complainant while taking out currency notes smeared with anthracene powder from the payable amount of Rs.130/- the accused No.1 may have given no contact to the currency notes, but while handing over the receipt to the complainant and lifting the currency notes placed on table may have given contact. The act of accused No.1 in not taking currency notes before issuing the receipt exhibits, the innocence of the accused. The accused No.1 had picked up the currency notes placed and at that very moment he was caught. Therefore, only at one place in the case on record, the panch had taken these currency notes from the hands of accused No.1.

14. Mr.Shah seriously assailed and commented on the evidence of the Investigating Officer. Prosecution has examined three witnesses to bring home the charge viz. P.W. 1 complainant and P.W. 2 panch who was with the complainant and has witnessed the alleged transaction and the Investigating Officer. The evidence of Investigating Officer shows

that he himself called the person complainant and he solicited and acquired service of complainant as punter. Mr.Solanki has himself investigated the crime even after carrying out raid. So in present case, the complainant, the Trap Officer and the Investigating Officer is one and the same person. In present case, the Investigation Officer is the person who will be interested in the case but he is a person successively involved in the success of the raid as it was his first trap after taking over as PI ACB. It is not the say of Mr.Solanki that he had received the information against the employees serving at Octroi Checkpost, Odhav only but it appears that the information was general but Mr.Solanki selected Odhav Checkpost where practically there was no frequency of vehicle bringing Octroi leviable goods and the receipt book is before the Court as Muddamal article and Mr.Solanki has tried to point out that limited vehicles were entering and there was no reasonable time gap between two vehicles bringing Octroi leviable goods. The time gap between calling two panchas and their arrival and also the time gap between approval of this two panchas and in the office ACB an actual first part of the panchnama drafted makes prosecution case suspicious. Mr.Solanki

appears to have arranged for a person who can remain amicable to him. Merely because the complainant was bringing goods through Octroi, Odhav Naka and he used to pay some additional amount to get rid of any type of harassment from the person on duty would not add anything to the strength of the case of the prosecution because there is no such specific case by the complainant nor the charge nor it is there in evidence that he himself had paid earlier bribe to the person accused No.1 or he was harrased by accused No.2. It was not possible for prosecution to put such a impediment because Octroi Naka clerks are changed and accused No.2 was posted in a recent past. The learned Trial Judge has recorded findings of guilt on certain extraneous consideration and surmises. The Courts are entitled to draw reasonable inference and can legally assume certain facts from the social experience but in absence of any legal evidence of such nature or the case or in absence of such crystallized case placed by prosecution, the prosecution's assumptions cannot be drawn and the trial Judge cannot assume certain things, which are not legally permissible. The Court should inspect the Muddamal to see where anthracene powder marks were seen and the all probable areas were anthracene

powder mark, ought to have been found. Considering the oral evidence led about the actual passing of muddamal currency notes from the complainant to the accused and other details as to the preparation and handing over of the receipt of Rs.60/ to the complainant, it is submitted that anthracene powder marks were not seen/found on all probable areas/places. Therefore, the trial Court ought to have given benefit of doubt saying that the prosecution witnesses are suppressing as to how and when the amount of Rs.80/ -all currency notes of Rs.20/ denomination, were taken out from the pocket of the complainant and it reached to accused No.1 and also as to the manner in which the receipt was given by accused No.1 and accepted by the complainant. While preparing and taking out the receipt, how receipt book was handed over is not coming forth clearly. Here it is necessary to mention that on some of the Muddamal articles, as mentioned in the panchnama drawn by prosecution witness in presence of panchas, the Trap Officer has put marks on the document where anthracene powder marks were seen during examination made with the help of ultra-violet lamp. The mudamal was not before the Court initially and therefore, the same was called and now

it is before the Court.

15. It is submitted by Mr.A.J.Desai that findings recorded by learned Trial Judge are absolutely legal and accused have been rightly linked with the Crime. Merely because, this was the first case of Trap and that too with the use of anthracene powder. The exercise undertaken by P.I. Mr.Solanki should not be viewed with any doubt or suspicious. If the argument advanced by Mr.Desai are mentioned in nutshell, then they are:-

(i) The ld. Trial Judge has rightly appreciated the evidence as to preparation of Form:F and the act of accused No.2 of not mentioning the actual amount of valuation though accused NO.2 was under obligation to assess the value of the goods in absence of the documents of the goods brought within the octroi limit of the city. Form:F is being prepared for all such goods reaching the octroi check-post without any bill or proof as to the value of the material and there is no error in evaluation part of evidence.

(ii) Though accused No.1 was aware that the value of the goods is assessed at Rs.3000/ considering the quality and quantity of the goods that were loaded

under the truck and receipt therefore of Rs.60/ was prepared, it is in evidence that after preparation of the receipt of Rs.60/, Rs.80/ were handed over i.e. four currency notes of Rs.20/ denomination each to the accused. He had counted these currency notes and notes were put on the table and from table, these notes were lifted or taken, is a lawyer's imagination and there is nothing on record to show that anthracene powder marks were seen on the table. There is clear evidence on record that Rs.20/ in excess to the actual amount of octroi assessed was demanded. Thus, the evidence as to demand and acceptance both are available on record. When there is sufficient evidence that illegal gratification was demanded and it was accepted, then a presumption could have safely been raised by the ld. Trial Judge and the accused persons were under obligation to rebut the presumption showing other convincing probabilities.

(iii) It is true that the answers given by the complainant in the cross-examination confers the status of accomplice, but merely because in the present case the accused has posed himself as accomplice and as trap witness, his evidence should not be discarded or otherwise viewed with suspicion merely on this count. As per settled legal position,

the evidence of an accomplice witness or trap witness in ACB cases, should be scanned closely and the Court should try to seek corroboration from other independent evidence. In the present case, the complainant gets direct corroboration from the panch witness and so also from the second part of the panchanama drawn by the trapping officer.

(iv) This is not a mere recovery of the amount because there is enough evidence to show that Rs.20/ were accepted as gratification. Evidence on page 253 of the paper-book suggests that the muddamal currency notes must have been accepted prior to the preparation of the receipt of Rs.60/. The amount thus was accepted first and after that receipt of Rs.60/ was prepared. According to Mr. Desai, it is the experience of the society that the driver of vehicle owner who wants to just pass through the octroi check post early, is compelled to pay some amount as bribe. As routine, the bribe amount is being offered and accepted. So, the arguments advanced on behalf of the appellant should not be accepted that there was no scope for the accused to demand illegal gratification and merely because the areas marked/encircled by the trapping officer at the time of drawing panchanama on the book-muddamal article No.5 and the document exh.11 are

only at 2 to 3 places, does not make the case of the prosecution doubtful. Within 3 to 7 minutes or maximum 8 minutes, the entire exercise of actual trap was completed by the trapping officer. There are no material contradictions in the evidence of PW2 panch witness Dilipbhai Natvarlal Patani. The facts stated by this witness in his deposition exh.13 (relevant page-63 of the paper-book) gets corroboration from the second part of panchanama. This witness has categorically stated that on return from accused No.2, he and complainant had turned towards accused No.1 and the accused Manubhai Brahmbhatt had asked the complainant that by assessing less value of the goods, he is writing Rs.60/ in the receipt and for that the complainant will have to pay Rs.20/ extra to him and thereafter from the amount kept on the left side upper pocket of the shirt, muddamal currency notes were taken out by the complainant and they were given to accused No.1. Accused No.1 had counted these notes by both the hands. The complainant had kept back the currency notes of Rs.60/ in his own pocket again and on giving Rs.80/ to accused No.1, pink colour receipt which was there, was given to the complainant. After taking pink colour receipt, the complainant went out of octroi naka and at the entry door of the check-post he had given signal.

According to Mr. Desai, there was no reason for the Court to discard this part of evidence given by an independent person and the ld. Trial Judge, therefore, can not be said to have committed a grave error in appreciating the evidence. The evidence as to recovery of muddamal currency notes from accused No.1 is also consistent if the evidence of panch witness is read in the background of the facts stated in the second part of panchanama.

16. I have gone through the judgment under challenge and ld. Counsel appearing for both the parties sides have taken me through the oral evidence of three main witnesses viz. PW.1 complainant Dabhai Kavabhai, PW.2 Dilipbhai Patani- Panch and PW.3 Trapping Officer PI Mr. Jayesh Solanki. FIR in the present case is one of the crucial documents. It is at exh.18. Undisputedly, the complaint has been recorded by PI Mr. Solanki at 14.00 hours on 24.08.1989 i.e. after completion of trap including the drawing of second part of panchanama. It is reasonably inferable that before recording the complaint at 14.00 hours, the say of the accused also must have been recorded by PI being a Trap Officer because he is supposed to ask the accused persons and mainly accused No.1 as to how and why he is found in possession of one currency note of Rs.20/ denomination in excess to the actual amount assessed for levying octroi. In reality,

the prosecution ought to have produced and proved the details of information received by PI Mr. Solanki because the trap was arranged on information of regular recovery -collection of illegal gratification by octroi clerks in the city of Ahmedabad. If the information was about a particular octroi check post, then recording of such information and production of such recording of information in the form of document, would have added some strength to the case of the prosecution. The complainant has not been named and it is not the case of the prosecution that the complainant, in the present case who is examined as PW.1, is a complainant in reality. The status of the complainant has been conferred on him. This was a decoy trap and the complainant was selected as a punter to help the ACB PI Mr. Solanki. A responsible officer posted as PI at ACB Police Station, if receives any information about the corruption on regular basis, he can arrange such a decoy trap and ascertain the truth about the information so received by him or by his police station. There are various modes to inform the police and mainly ACB Inspector about the modes operandi of corrupt government servants especially working at the places or on the positions where such corrupt public servants can collect the amount of illegal gratification. PI Mr. Solanki has said in his deposition that he had received information about such corrupt practice adopted by the persons posted

at octroi check post situated on a road coming from town Kathalal. Of course, it is not in evidence, but this Court can take judicial notice of the topography and geography of the State of Gujarat and mainly of district Ahmedabad vis-a-vis other districts. Kathalal is the town of district Kheda and one road from Kathalal town is leading to Ahmedabad which passes through the area known as Odhav of city of Ahmedabad. The Ahmedabad Municipal Corporation, as per the case of the prosecution, has kept one octroi check post on that road and that check post is known as Odhav Octroi-Naka. There is some logic and force in the arguments of Mr. Shah that Mr. Solanki, PI must have received information of such corrupt practice being adopted and followed by the persons posted on octroi check posts of city of Ahmedabad and not regarding Odhav Octroi Naka referred to in the present complaint and deposition of Mr. Solanki as there was no reason for Mr. Solanki to suppress the information received by him when the same was received well in advance during the previous night. Information of such nature received by PI Mr. Solanki in his office had become crucial when Mr. Solanki had decided to lay a trap on the strength of the information received. So, before arranging for panchas or at least before preparation for drawing first part of panchanama, he ought to have recorded the exact information received by him. If the information was recorded in a station diary, then gist of the information

recorded in the station diary ought to have been made a part of the chargesheet, otherwise it is difficult for the accused to confront the trap officer who is also the IO and it becomes difficult to test the veracity of the statement made during the course of deposition in the Court. For the sake of arguments it is accepted that PI Mr. Solanki had received the information about the corrupt practice being followed by the persons posted at Odhav Octroi Naka, then also, it is difficult for the Court to infer that the information was against the present two accused persons. The Court can reasonably infer that Ahmedabad Municipal Corporation must have managed for the staff members and arranged shift duties so that octroi naka can be attended by the authorized persons round the clock. The evidence led by the prosecution is sufficient to infer that PW.1 examined as complainant in the present case, was bringing goods within the octroi limits through Odhav octroi naka regularly. The case of the prosecution is that the persons on duty at octroi naka were receiving gratification for assessing the value of the goods brought within the octroi limits less than its actual market value. Of course, there is no clear evidence on record, but it is the experience of the Court that a schedule of leviable octroi fees is a statutory schedule and the rate of octroi may be different for city or town wise and the method as to how octroi fees shall be

calculated and levied also varies item wise. There may be one method as to calculation of market value of the material and for some material the octroi is levied load-wise. There can be even fixed rates of octroi for certain items. In the same way, how octroi fees shall be assessed and recovered is also a matter of regulation. In the present case, the case of the prosecution is that the truck of PW.1-complainant was stopped by Mr. Solanki and he was requested to help PI Mr. Solanki to arrange the trap against the person on duty whosoever he may be posted at Odhav Octroi naka and as PW.1 complainant agreed, the first part of panchanama was drawn. The first part of panchanama in the present case is not significant like in a case where the details are being drawn about the demand of illegal gratification bearing certain contents of the grievances of the complainant whereby the panch witnesses are being put to notice about the nature of trap and the cause for demand of bribe so also the anticipated amount of bribe demanded. The evaluation of the evidence in a decoy trap or a trap arranged after seeking assistance of a punter but who in reality is not a complainant differs from the cases of ACB trap arranged on the strength of the complaint from a person who is asked to pay the gratification by a public servant.

17. In the present case, PI Mr. Solanki had made first

attempt after his posting in ACB Police Station since 26.06.1989 and this being a first trap, it is also possible that he may have acted with utmost care and caution. Absence of experience or an element of less experience of Mr. Solanki is a point hammered by Mr. Shah, but it is the experience of the society that in number of cases, a person entrusted with a duty or challenging job for the first time, acts with care and caution and the result ultimately is either found excellent and if not, then at least satisfactory. So, merely because this trap was first trap of Mr. Solanki, his evidence should not be considered with any discount unless the Court is able to reach to such conclusion after evaluating his version individually and so also in the background of other evidence led during trial. The case of the prosecution as mentioned earlier is that the personnels posted at Odhav Naka are accepting gratification for assessing the value of goods less than its actual market value and thereby obliging the persons who bring goods within the octroi limits of city of Ahmedabad, by charging less amount of octroi fees then actual payable. According to PI Mr. Solanki, this information was received by him on 23.08.1989, but there is no evidence as to when such information was received. The time of information received is a relevant fact because the trap was arranged in the early hours on the next day i.e. on 24.08.1989. It is stated by Mr. Solanki

that on receipt of the information he had made up his mind to arrange for a trap on that octroi naka and, therefore, he had asked his subordinate police official Mr. HN Pande to arrange for two panchas from government office. Written requisition was sent to the office of the District Collector and office was also requested that two government employees may be sent to ACB Police Station at about 12.00 midnight. The members of ACB staff were also asked to remain present. Both the panchas had reached to the office of ACB at 00.30 hours and panchas were appraised that a trap is to be arranged because the employees on duty at Octroi Naka are accepting illegal gratification for assessing the less value of goods entering in the city of Ahmedabad through octroi naka. So, it is not possible for the Court to accept altogether a new case that has been impliedly placed by ld. APP Mr. AJ Desai that the persons on duty at octroi naka used to accept some amount by way of gratification so the vehicle driver or owner may not have to wait at octroi naka and they can clear the octroi naka at the earliest and as a routine, bribe amount is being offered and it is being accepted by the public servants posted there on duty. This Court can not consider this submission because acceptance of such arguments would be against the substratum of the story of the prosecution. The prosecution, in the present case, is under obligation to establish that (i) value of

the goods was much higher then assessed by the accused persons, or (ii) the value of the goods was assessed as suggested by the complainant PW.1 ignoring the actual market value of the goods loaded in the vehicle, or (iii) conveniently the octroi charges were assessed less by both the accused or at least one of them i.e. accused No.1 by playing some tricks or by applying some different standards as to assessment of the value of the goods. One of the accused was on duty as Assessor i.e. Valuation Officer. The document exh.11 i.e. Form:F is sufficient to prove that the material and truck of the complainant was not having any pakka bill as to value of the goods, otherwise there was no reason for preparing Form:F. It is in evidence that Form:F is being prepared and details are being filled in, in the cases where goods are brought inside within the octroi limits, are without pakka bill. It is inferable that if goods carrier -driver is an illiterate person, the details of Form:F obviously shall have to be completed by the person on duty. It is likely that literate person may fill in Form:F in his own handwriting. Form:F is in the nature of a declaration and the contents of form clearly bind the person declaring the details as to value of the goods. The amount or value of the goods can be quoted by the truck driver or owner or it can be assessed by the Valuation Officer on duty. It is also possible that value assessed by the person/ public servant on duty may be the amount agreed

between the importer driver or owner and the valuer on duty. The details of exh.11 are filled-in by a ball point pen having blue colour ink except the figure shown in the column meant for “market value”. The figure of the value i.e. “Rs.3000/” is shown in red by the ball point pen. Signature of the Valuation Officer is also with the ball point pen having red ink. Signature of the Valuation Officer i.e. accused No.2 bears date of 24.08.1989. At two different places, details are mentioned. Form:F is a printed form and it is in evidence that such forms are being kept in octroi naka in a loose form and import bill number is being written by hand and number of import bill is mentioned in exh.11 as “5088-9” with date 24.08.1989.

18. The members of the raiding party had reached Kathalal cross-roads after completing first part of panchanama with other material including bottle of anthracene powder and ultra-violate lamp. At about 5.00 hours, the members of raiding party and mainly PI Mr. Solanki stopped the vehicle of the complainant PW.1 and inquiry was made whether the material loaded in the vehicle is to be taken within the limits of Ahmedabad City. According to the prosecution, at that time, PW.1 complainant informed Mr. Solanki that the persons at Odhav Octroi Naka demands illegal gratification of the amount of Rs.20/ to Rs.50/. The truck driver was one Mr.

Mikshadmiya Malek and he had also supported the say of the complainant Dabhai. The complainant Dabhai was asked to give Rs.130/ so that the same can be used in laying trap and Dabhai was tendered these currency notes of Rs.20/ denomination and one currency note of Rs.10/. Those notes were smeared with anthracene powder. When PI Mr. Solanki was sure on the information given by the complainant Dabhai that a person on duty normally asks to pay gratification of Rs.20/ to Rs.50/, whether it was required to smear all currency notes of Rs.130/ or smearing of anthracene powder on currency notes of Rs.50/ would serve the purpose is the question. In the same way, it was possible to smear the currency notes of Rs.70/ with anthracene powder and the complainant could have placed these currency notes in two different pockets i.e. in one pocket Rs.20/ and in another pocket, Rs.50/ and if amount demanded by the person on duty is Rs.50/, then the amount from that very pocket could have been taken out and given to the person demanding the same. Similarly, it could have been done qua other notes of Rs.20/ kept in a different pocket. It appears that what was the value of the goods, according to the complainant, was not asked by Mr. Solanki any time prior to smearing anthracene powder on the currency notes otherwise the actual value of the goods could have been reflected in the first part of the panchanama. It is possible that this question may have been asked by Mr. Solanki. It is also simultaneously

possible that for the success of the trap, inflated amount qua the value of goods might have been mentioned. The evidence is that value of the goods was required to be assessed by accused No.2 and in absence of evidence from any handwriting expert, it is possible to infer by this Court that value of goods was assessed by accused No.2 with the same ball point pen with red ink by that he had signed exh.11. So, accused No.2 can be said to have discharged his duties. It is not the case of the prosecution that accused No.2 had either demanded the amount of bribe or he had any conversation about the total value of the goods. It is neither the say of the complainant Dabhai nor the description in the panchnama that there was conversation between accused No.2 and complainant PW.1 that accused No.2 had initially disclosed the assessment of the value of the goods at much higher rate then what is being ultimately written and found in Form:F i.e. Rs.3000/. There is enough force in the arguments of Mr. Shah that if the value mentioned in exh.11 is the value suggested by the complainant, then the figure can not be said to have been reduced with a view to have some amount by way of gratification and if the figure is genuinely mentioned without any conversation with the complainant, then this value is found ultimately to be the correct value of the goods. On the contrary, the evidence suggests that Mr. Solanki himself had attempted to get the correct market value of

the goods by sending the truck to its destination i.e. at the place of purchase of the goods and value of the goods was assessed at that place, was something less than Rs.3000/ i.e. the amount written in Form:F. So, none of the accused had attempted to even oblige the complainant by assessing the less value of goods. When value of goods was assessed as per its correct market value bona fide, then there was no scope for any of the accused to part with any amount as gratification and there was no need for the complainant to offer any amount as gratification. The complainant was otherwise under an obligation to pay Rs.60/ as octroi charges. This amount of Rs.60/ was not required to be paid at all by the complainant through the notes which were smeared with anthracene powder. Neither the complainant nor Mr. Solanki nor any member of the raiding party appears to have thought that if the value of the goods is assessed correctly and receipt is also prepared for the amount actually payable as octroi charges, then what should be done. The complainant ought to have been given probable amount which was required to be paid as fees at octroi naka without smearing anthracene powder. It is in evidence that the accused No.1 said that he is preparing receipt of Rs.60/. It is not the case of the prosecution that the octroi charges to be paid actually were more than the amount mentioned in the receipt. On the contrary, the prosecution has practically accepted that the receipt prepared for the

amount of Rs.60/ was in accordance with the norms i.e. at the rate of 2% of the value of the goods-wood loaded in the truck- and the complainant ought to have given initially Rs.60/ only. When the accused No.2 had said that he is preparing receipt of Rs.60/, there was no reason for the comlainant to take out any amount more than Rs.60/. If any of the accused or both of them under connivance of each other were interested, then as per the information received by Mr. Solanki on 23.08.1989, or as per the information given by the complainant to Mr. Solanki at Kathalal cross-roads when Mr. Solanki inquired from the complainant with a view to get confirmation as regards the information received by him, would have demanded some amount by way of gratification viz. either Rs.20/ or Rs.50/ or any amount inbetween. The vehicle of the complainant was the sole vehicle at octroi check post. The documents i.e. muddamal receipt books etc produced clearly reveal that practically no vehicle had passed through that Naka immediately prior to the arrival of the truck of the complainant and it is not the say of any of the prosecution witnesses that till the time they were preparing 2nd part of panchanama, some other vehicle had also come otherwise it would have been narrated as to what had happened to the owner and driver of the vehicle qua the octroi charges payable by that third person. So, there was no scope even for the accused to ask for illegal gratification for giving out of turn priority

making the complainant free early without keeping the complainant waiting.

19. The ld. Trial Judge mainly has concentrated on the presence of anthracene powder marks on the hands of the accused and also on some articles i.e. exh.12 receipt and also on ball-point pen handled by accused No.1 and the receipt book-muddamal article No.5. Recovery of the amount from the accused has been believed by the ld. Trial Judge and as the amount recovered from accused No.1 being more than the amount mentioned in the receipt exh.12, an inference has been drawn as to acceptance of illegal gratification of Rs.20/ from the complainant. Plain reading of the judgment is sufficient to create an impression in the mind of the Court that the ld. Trial Judge has not concentrated on other probabilities that were placed before the Court by the defence side and the effect of infirmities brought to the notice of the Court. ACB trap cases are sensitive cases and especially when the prosecution is able to get sufficient assistance from the scientific data like the presence of anthracene powder or phenolphthalein powder on the hands of the accused etc. , the Court is supposed to evaluate the oral evidence led qua the demand and actual acceptance of the amount of gratification other than legal remuneration. Unless the cogent evidence is led by the prosecution that the currency notes or illegal

gratification was accepted under any agreement or understanding, even implied, and recovery ultimately is found to be the recovery of the amount of illegal gratification only, then in those cases only, a presumption against the accused can be drawn and the onus can be said to have shifted on the shoulders of the accused.

20. Undisputedly, accused No.1 in the present case, was a person authorized at least to collect the muddamal currency notes tendered to him as he was authorized to collect the octroi fees for Ahmedabad Municipal Corporation. Accused No.1 was discharging his duties as a public servant. When the Court starts thinking as to the duties and obligations of a public servant, then at the same time, the Court should also apply its mind as to whether any hidden privilege is there with that very public servant who has been trapped. So, the accused in the present case was a privileged class of a public servant who was authorized to accept -collect the currency notes tendered to him as octroi fees. The answers given by Mr. Solanki in his deposition, in my view, who is an important and crucial witness in the present case, are relevant. This witness has said thus; “... He does not recollect whether after entering the complainant and panch No.1 in the octroi naka, accused No.2 had ever come out of octroi naka to inspect the

material-wood loaded in the truck or not". He has also stated that the octroi naka, employees posted on security duty and peons were there and their statements have been recorded. He has categorically admitted that "in the present case, he has investigated that the octroi fees have been levied as per the valuation made by the Valuation Officer". Valuation of the goods was assessed at Rs.3000/. This admission made by Mr. Solanki if read in reference to the admission made by PW.1 complainant, then the allegations made in the complainant viz. case of the prosecution, gets vitally affected. The complainant had admitted that he had purchased certain quantity of woods on 20.08.1989 from Fatabhai Dahyabhai Parmar and Ramanbhai Ramabhai. He has also admitted the value of the material purchased by him from these two persons. He has further stated that "it is true that after completion of raid, this wood loaded in the truck after getting it measured, was sold to one Hingalaj Timber Mart for Rs.2975/." According to this witness, Hingalaj Timber Mart is a Saw Mill and at that time PI Mr. Solanki was with him, meaning thereby that Mr. Solanki had confirmed the figure as to the value of the goods within couple of minutes or within half an hour or so after completion of raid. Thus, the complainant was never obliged directly or indirectly either by accused No.1 or by accused No.2 by assessing less value of goods imported. When the case of the prosecution is that the public servants on duty are

accepting gratification by charging less than the actual octroi fees and for that their modus is to assess the value of the goods less, in the facts and circumstances referred to above, does not stand. The gesture of passing Rs.20/ more to accused No.1 by the complainant is not a bona fide act of a responsible citizen. It is not the case of the prosecution nor it is the version of the complainant that after taking out the currency notes from the pocket, the complainant initially had given Rs.60/ i.e. three currency notes of Rs.20/ and thereafter Rs.20/ was paid separately and in addition to the leviable fees. It is difficult for anybody to visualize if folded currency notes given is one more in number if the currency notes are either very few or they are comparatively more in number. At the place of 3 or 4 notes or at the place of 4 or 5 notes, one more currency note can be surreptitiously given. It is true that at the place of 4 or 5 currency notes, one can not conveniently pass surreptitiously 20 or 30 currency notes. In the same way 55 to 60 currency notes can be passed, but not 90 to 100 notes. Rs.80/ were taken out from the pocket and was given. Rest of the amount was kept back again by the complainant. It is possible to infer in such a situation that the complainant must have used his both the hands because he has taken out Rs.80/ from the total amount of Rs.130/ kept in his pocket. Anthracene powder marks were seen at various places including on table and so also on

the receipt book- Article-5 along with receipt handed over to the complainant. I have carefully considered the receipt exh.12 and the relevant dates on muddamal article-5. It is possible for the Court to infer legitimately that figure “Rs.60/” was written subsequently in the receipt exh.12. The sequence and the evidence given by the complainant and panch shows that figure of “Rs.60/” was written subsequently and rest of the details of the receipts were prepared prior thereto. It is stated by one of the witnesses that accused No.1 has said that he is preparing receipt of Rs.60/. The amount then was given and it is said that the receipt of Rs.60/ was given thereafter. The presence of anthracene powder mark on the ball point pen is considered to be very vital against the accused while appreciating the evidence.

21. It is settled legal position that the accused is supposed to explain about all incriminating circumstances and if need be he can give evidence to rebut the same. For that the Court is supposed to put all incriminating circumstances emerging from the evidence led by the prosecution while recording his statement under section 313 of CrPC. Improper, incomplete or cross-examination type of questions, if asked by the ld. Presiding Judge, is likely to result into an unfair or unjust conclusion. Such practice has been deprecated by the higher court. It

is true that this lacuna is a procedural lacuna and can be over-reached by the appellate court also and accused can be afforded an opportunity to explain the incriminating circumstances in a given case and in a given fact situation. Of course, not in all such or similar cases, but it is also an accepted principle of criminal jurisprudence of our country that the explanatory situation as automatically emerging, if has emerged from the evidence led during the course of trial, then the accused can not be said to have any obligation to put up his own explanation and he can point out the probability at the time of arguments. Which type of probability can be said to be reasonable is again a question that has been answered in en-number of cases by this Court and by the Apex Court. The probabilities that may be pointed out by the accused should not be a more imagination and the probability pleaded should not look like the stretching of imagination on hypothesis. Probability which can be accepted by a reasonable prudent common man only can be said to be a probability acceptable in the eyes of law. In the present case, the back-bone of the satisfactory evidence considered by the ld. Trial Judge as to the presence of anthracene powder at various places including on the hands of the accused, is found explained from the evidence led by the prosecution. It is not enough for the accused to offer an explanation which had not been disproved or to create

some doubt only in the mind of the Court. In the case of **Dhanvantrai Desai v/s State of Maharashtra, AIR 1964 SC 575,** it is observed that it is open to the accused to show that though money was not due to him as legal remuneration, it was legally due to him in some other manner or he had received it under a transaction or an arrangement which was lawful. So, if something which can be said to be more than bare words is emerging to support the probability posed by the accused, then the Court has to consider that aspect and then try to hold the accused guilty of the offence punishable under the Prevention of Corruption Act on the ground of presumption.

22. The effect of the presence of anthracene powder marks allegedly found at various places mentioned in the second part of panchanama is seriously challenged by the other side. Mr. Shah has drawn attention of the Court to one important improbability from the evidence of the Trap Officer PI Mr. Solanki. According to PI Mr. Solanki, anthracene powder was smeared on currency notes by the complainant at Kathalal cross-roads where the car was parked and by putting inner lights of the car on, the anthracene powder was smeared and the experiment was done in the presence of panchas to make them understand as to the importance and effect of the use of anthracene powder. It is possible to visualize the entire exercise which was allegedly carried out inside the motor car and

that too under the inner lights of the motor car and in the background of the maximum space available inside the car in our country. When it is in evidence that anthracene powder was smeared in presence of PI Mr. Solanki, then it can be said that Mr. Solanki was inside the car. It is in evidence that the currency notes of Rs.130/ were smeared with anthracene powder. Battery of ultra-violate lamp must have been also taken inside the motor car as panchas were to see and witness such exercise and, therefore, presence of both the panchas inside the car also can be presumed. According to PI Mr. Solanki, the entire exercise of smearing the anthracene powder was done by one Nathabhai and he had made panchas and the complainant appraised about the characteristic of anthracene powder. So also, Mr. Nathabhai can be presumed to be inside the Car. Two vehicles were there i.e. car and the truck that was stopped by Mr. Solanki loaded with wood. So, at least four big lights were available at least for some time to carry out the ultra-violate lamp experiment. Inner light of motor car with the presence of about 5 persons inside the car, would have made this exercise possible is the question, which has not been appropriately appreciated by the trial Court.

23. As mentioned earlier, this was the first trap case of Mr. Solanki after his posting in the month of June

1989 in ACB Police Station. As none has turned up for all this long period as complainant in ACB police station since the posting of PI Mr. Solanki so that Mr. Solanki can arrange for a successful trap, whether that fact had tempted Mr. Solanki to lay a trap any how is also a point which needs to be focused because the information allegedly received by Mr. Solanki only refers Odhav octroi naka. It is not in evidence that how many octroi nakas are there in the city of Ahmedabad. The so-called practice allegedly adopted by the employees of Odhav octroi naka qua acceptance of bribe amount by assessing less value of the goods then its actual market price, possibly may have been followed by the employees posted at other octroi nakas of city of Ahmedabad. The first part of initial panchanama that was drawn in ACB police station clearly reveals that the information was not of the practice followed by octroi naka of assessing less value of the goods, but it was more specific qua a particular good i.e. wood being brought within the octroi limits through that octroi naka. Therefore, panchas as well as PI Mr. Solanki and members of raiding party were supposed to stop a truck moving towards the city of Ahmedabad loaded with wood. Why Mr. Solanki had not arranged for such a trap immediately during the day part or during late evening or early hours of night of the day on which he had received such information, is the question which is not found

explained by the prosecution and by PI Mr. Solanki in particular. Yadi was sent to the office of Collector to send two panchas. It is not the say of of Mr. Solanki that yadi was sent after closure of the office hours and that too at the residence of any responsible officer. When loaded material was not of such a high value and driver was already there in the truck who was driving the vehicle, whether the complainant could have been made a punter is also a point which has some relevance. The complainant PW.1 claims to be the owner of the goods and he was to off-load the truck at Mahalaxmi Timber Mart. Name of Mahalaxmi Timber Mart is referred specifically at more than one places including in the panchanama. Surprisingly, after raid, the truck was taken to one another timber mart in the nearby area i.e. Hingalaj Timber Mart. It appears that the owner of Mahalaxmi Timber Mart or servants working there might not have supported the trap and so the truck perhaps was taken to a third place. Whey the complainant had not resisted the request of PI Mr. Solanki ? He could have insisted that let the truck loaded with entire material be taken to Mahalaxmi Timber Mart and the value of the material can also be assessed and weight of the loaded truck also could have been done there. The act of taking the truck to a third place i.e. at Hingalaj Timber Mart appears to be a special gesture of PI Mr. Solanki. All these circumstances impliedly indicate that the things were

perhaps arranged and, therefore only, complainant and owner of the goods was asked to be there in a truck and he also must have been instructed to reach Odhav octroi naka by loading the wood in the truck so that he can reach at odd hours in the early morning where normally there is less traffic and mainly less vehicular traffic bringing the goods within the limits of city of Ahmedabad. The Ld. Trial Judge has not considered this probability which has automatically emerged from the case placed and pleaded by the prosecution by leading evidence. Unless difference is very high qua the value of the goods, only then alleged information gathered would get support and, there was no reason for Hingalaj Timber Mart to pay less and the complainant also would not have accepted the value of goods assessed by Hingalaj Timber Mart if it was found less. So, the exercise of carrying truck to Hingalaj Timber Mart and the value of the goods assessed in presence of Mr. Solanki and the complainant, destroys the substratum of the case of the prosecution. It is not the case that the persons on duty at Odhav octroi naka as a matter of course are collecting illegal gratification creating impliedly thereby harassment. New case can not be carved out. It would be a conjecture on the strength of extraneous circumstances.

24. Mr. Shah, ld. Counsel appearing for the appellant accused has of course concentrated the arguments on the

use of anthracene powder and the say of the prosecution as to the marks of anthracene powder found present placing reliance on more than one decisions to plead that the say of the prosecution witnesses should not be accepted because none of these witnesses were able to establish scientifically and convincingly the presence of anthracene powder on the hands of the accused and at other places mentioned in the second part of panchanama including the documents exh.11 & 12 and muddamal article No.5- receipt book. Mr. Shah has hammered that PI Mr. Solanki was inexperienced. It is not the say of Mr. Solanki that he was trained departmentally qua use of anthracene powder while laying ACB traps. One Mr. Nathubhai- a member of the raiding party who was a prosecution witness and an experienced person has undertaken that exercise of smearing of anthracene powder and that witness has not been examined otherwise the defence side could have destroyed the first part of panchanama which was allegedly prepared regarding experiment in motor car by putting inner lights of the motor car on, as highly improbable. The witnesses are confused also as to the length and width of ultra-violate lamp vis-a-vis its size. But it is not necessary in the present case to comment on this aspect because as discussed in the earlier part of the judgment, the experiment carried out while drawing first part of panchanama appears to be less probable.

25. There is not only logic, but the evidence led by the prosecution clearly supports the arguments of Mr. Shah that the accused in the present case was not supposed to explain clearly as to how anthracene powder marks were seen on his hands or what is his say about anthracene powder marks on the ball-point pen which was taken under ultra-violate lamp at the time of drawing of second part of panchanama. This clinching evidence gets explained by the witnesses examined by the prosecution. Panch witness, in his deposition, has stated that on arrival of Mr. Solanki, PI at octroi naka, he had instructed the accused not to move and also instructed that nobody should touch the articles that were lying on the table. He has stated that “it is not true that at the time of raid when Mr. Solanki came, bribe amount was not there in the hands of accused No.1.” He has accepted the suggestion that he took the muddamal currency notes from the hands of the accused. The time taken in completing the raid is described as 3 to 5 minutes. According to Mr. Solanki, everything was over within 3 minutes and according to panch witnesses, everything was over within about 5 minutes. It has not come on record exactly that after getting signal, as to in how many minutes or seconds PI Mr. Solanki was able to enter the octroi naka. If the say of the prosecution witness is accepted, then it can be said that the accused had not pocketed the amount tendered by the complainant prior to entry of PI Mr.

Solanki. Accused No. 1 was otherwise entitled to accept the currency notes. In the case of **Kantilal H.Patel v/s State of Gujarat, 2007(1) GLH 736,** this Court has held that "...in ACB traps cases, if there is hazy evidence as to initial demand made before presuming acceptance of hidden demand of illegal gratification, the Court should be assured undoubtedly that the appellant had directly or indirectly demanded the amount of bribe -illegal gratification only. The accused being a revenue office on behalf of the State, does not fall in the category of the persons who are not supposed to discharge their duties." Here in the present case, there is no scope to have evidence as to initial demand of bribe made by the accused being a trap arranged with the help of a punter on receipt of some information. The present accused was also authorized to accept the currency notes on behalf of Ahmedabad Municipal Corporation as octroi fees. So, the acceptance of folded notes of Rs.20/ denomination that were smeared with anthracene powder, would also bring anthracene powder marks on the hands of accused. Only on counting, the accused can realize that one more note of Rs.20/ denomination is there. When accused No.1 has not either pocketed the amount nor he had placed it on the table which could have been said to be implied acceptance after counting the same, then it is difficult for the Court to reach to a conclusion that acceptance of muddamal currency notes was against any demand made

earlier especially in the background of other above-stated circumstances and other circumstances that have emerged in the present case. PI Mr. Solanki ought to have waited for some minutes more to get confirmation that the amount of Rs.20/ in excess has been accepted lawfully and, therefore, it can be said to be an acceptance of gratification by a public servant. This Court is supposed to look to the evidence and the evidence of prosecution witnesses on this point is not consistent. On the contrary, Mr. Solanki, in his cross-examination, has stated thus; “after getting down, all the persons who were in the truck, had scattered nearby Naka and I was close to Naka. At that time, no other persons were there near octroi naka and no other truck was also there at the spot. The complainant and the panch had entered the octroi office and it took 3 minutes in receiving the signal as agreed. He was a first person to enter the octroi naka. Mr. Merujai was immediately after him.” Mr. Merujai- the Court is informed that Mr. Merujai is the PSI assisting PI Mr. Solanki in trap. Mr. Solanki has further stated that “it is not true that when he entered the office, muddamal currency notes were in the hands of accused No.1”. This would mean that this evidence of PI Mr. Solanki is in direct conflict with the evidence of panch witness. He has also denied that he got the currency notes recovered from the accused No.1 through panch No.1. Mr. Solanki has voluntarily stated to the

Court that the articles that are seized were on the table and they were kept as they were. He has accepted that in the panchanama, it is written that Manubhai Brahmbhatt i.e. accused No.1 was asked to give the Form:F- a form filled in by Dabhai Vaghela i.e. complainant and that form was given which was on the table. This indicates that the accused was compelled to touch Form:F after the entry of Mr. Vaghela and also touching of muddamal currency notes by the accused. Mr. Solanki has voluntarily stated that accused No.1 had tendered the receipt book of Form:F. He has admitted that Manubhai Brahmbhatt i.e. accused No.1 used ball-point pen while preparing receipt and he was asked to tender and produce the ball-point pen and then the ball-point pen was produced by accused No.1. It is also mentioned in the panchanama that ultra-violate lamp experiment was made of each article in a sequence as they were tendered for ultra-violate test. How Form:F was filled in, whether at any point of time any blank was left deliberately etc. are the points that have been focused by the ld. Trial Judge while recording conviction. Of course, these aspects are relevant, but not very significant because they are not found consistent with the guilt only nor they are inconsistent with the innocence of the accused because ultimately, the value of the goods was found less than Rs.3000/ that was assessed by accused No.2. Therefore, there is clear circumstances indicative of one

fact that muddamal articles that were allegedly examined under the ultra-violate lamp, were taken for experiment through the accused. The accused was asked to tender these articles one by one that were kept on table. Accused himself was touching these articles for tendering the same and so the marks of anthracene powder were bound to reflect. So, the presence of anthracene powder on ball point pen or on Form:F, is not significantly carrying the case of the prosecution any further. When these circumstances were already there on record, why the accused should be asked to explain as to how the ball point pen and Form:F were found stained with the anthracene powder marks. Blue circle is drawn around such spot so this Court reasonably say that presence of anthracene powder marks was only on one side of Form:F. If the said article was really handled by the accused after accepting the amount of bribe, then at least anthracene powder marks would have been found at the back portion of Form:F, but it appears that marks are not found there and, therefore only, there is no such marking with circle on the back portion of Form:F. In the same way, when the case of the prosecution is that receipt exh.12 was handled by two different persons after accepting the amount of bribe, then anthracene powder marks normally would be at more than two places; viz. firstly at two places where the hands of accused would have touched and secondly at other two places where the

complainant would have accepted the receipt handed over to him by accused No.1. However, only at two places, anthracene powder marks were found if the circles drawn by PI Mr. Solanki are seen. It is on the left hand side of the receipt and that too in the middle portion. The area of anthracene powder marks seen on the front side tallies with the circle shown on the back portion of exh.12. So, Mr. Shah has rightly argued that these anthracene powder marks might have been seen as this receipt was given by the accused as he was asked to do so by Mr. Solanki to carry out ultra-violate lamp experiment. The circle drawn on exh.12 nullifies the case of the complainant and panch that it was prepared piecemeal and after counting muddamal currency notes and the amount, figure “Rs.60/” was written and after tallying the pink page of the receipt book, it was handed over to the complainant and it was received by the complainant. On the contrary, the evidence creates an impression in the mind of the court that before receipt was taken out of the book, Mr. Solanki under sheer haste, had entered the octroi naka enthusiastically to have a successful raid. I have also carefully seen the book from which this receipt was taken out. If the receipt of Rs.60/ was prepared and taken out after acceptance of Rs.60/ as an amount of bribe, then at number of places, anthracene powder marks would have been found as the book was tendered for examination under

ultra-violate lamp test by the accused on the direction given by PI Mr. Solanki and so the book would have stains of anthracene powder at number of places then the places actually shown by drawing blue circle. Blue circle is found at only two places. The muddamal article No.5 Receipt Book is bound book of printed receipts having three different colours of page for each receipt. It is horizontal flat book and on each page, two receipts are printed. Receipt No.9 in the present case was prepared and the pink portion required to be given to octroi duty payer and for which separation of the receipt was required to be done by tearing the perforated portion of the receipt attached with receipt No.10. Obviously, receipt No.10 is blank. In the same manner, earlier receipts were prepared between 12.30 a.m. And 7.00 a.m. On 24th August,1989 bearing Receipt Nos. 5 to 8. The last receipt prior to receipt No.9 appears to be for Safex Engineering for importing of goods worth Rs.13,000/ and that receipt was prepared at 9.00 a.m. The time in the present receipt is shown as 7.10 a.m. On none of these receipts, either receipt No.7 or receipt No.10 circles with blue ink ball point pen are found, meaning thereby that either these receipts had not come in contact with anthracene powder or PI Mr. Solanki may have acted negligently in marking the areas where anthracene powder marks were seen. A person tearing apart receipt No.9 i.e. the receipt produced in the present case, shall have to

put his hands or some pressure on receipt No.10 to get receipt No.9 detached. Surprisingly, reference of presence of anthracene powder marks on receipt No.10- a very crucial part of the book, is not made stating to have stained with any anthracene powder. Cover of receipt book is shown to have anthracene powder marks on the lower middle portion and back portion of this very receipt book is also shown to have anthracene powder marks near the bound portion of the book. There is a big circle drawn with blue marking ball point pen. It appears that when this book was lifted at the time of giving the same to PI Mr. Solanki by accused as per the direction, the anthracene powder must have touched. Under a particular contingency and set of circumstances, the use of anthracene powder can go against the prosecution also. Absence of anthracene powder marks on receipt No.10- an immediate next receipt or on white or yellow pages of receipts issued, makes the version of the complainant and panch witensses doubtful as to preparation and handing over of the receipts by accused No.1 after accepting the amount of bribe i.e. additional amount of Rs.20/. It also seriously affects the allegation that the accused initially had counted all currency notes and after accepting the said amount, he had written figure “Rs.60/” in the receipt and receipt thereafter was handed over to the complainant. For short, the presence of anthracene powder marks on all these articles is found explained as

these articles were received for experiment by Mr. Solanki and the members of raiding party through the hands of the accused. An impression created in the mind of the court is that the complainant in the present case is a person pre-arranged otherwise it would not have been reflected in the deposition of Mr. Solanki-PI that he had received information regarding a particular octroi naka and also it would not have been there that the persons on duty at octroi naka are accepting the gratification from the persons who are bringing wood within the city limits by getting the value of the goods assessed less than its actual market value. The presence of owner of the goods at odd hours, though he himself was not a driver, indirectly supports this contingency. The court can easily co-relate these facts with the fact that this was a first case for PI Mr. Solanki and till that date, he had not done anything substantially for want of a complaint under which he could have laid a trap. It also emerges that the objectionable or otherwise inadmissible part of evidence has been read. Inadmissible portion of the panchanama ought to have been bracketed and if this part is bracketed and ignored as part of panchanama, no reliable evidence would remain. The strong probability is emerging that when the accused was preparing a receipt, the amount was put on the table and receipt was given to the complainant and then the amount was lifted by the accused. Receipt was to be prepared on completion of

Form:F only. The complainant must have simply walked away after putting the amount on table. Though it was indicated that Rs.60/ was octroi fees, he put one currency note more of same denomination i.e. Rs.20/ denomination and walked away, otherwise the anthracene powder marks would have seen also at many other places then the place where the same are actually found.

26. In this background, the explanation given by the accused while answering the questions to the Court under section 313 of CrPC appears to be very probable. It is not the case of the prosecution that accused No.2 had ever demanded any amount. On the contrary, the value assessed by him is found to be the correct value of the goods. The finding recorded by the ld. Trial Judge is arrived at on evaluating the evidence from only one and limited angle. The judgment of the ld. Lower Court which is assailed seriously sounds mostly on moral conviction then the legal one. If such view is upheld, then in all cases where the prosecution is successfully able to lay a trap, only on the strength of the evidence of only one witness, the accused on moral ground can be held responsible for the offence punishable under the Prevention of Corruption Act. Time and again, it is observed by the Apex Court that the finding of the Court may be moral, but it should not be a moral finding only. Firstly, the finding should be legal and based on

the facts legally proved. The Courts have limited jurisdiction to draw inference on the strength of proved facts and conjectures and surmises drawn on moral conviction of a judge has no room to play, is the accepted proposition of our criminal jurisprudence.

27. Keeping in mind all these settled legal principles and oral as well as documentary evidence available on record in the present case, the Court is of the view that the finding recorded by the ld. Trial Judge is invalid and can not sustain in the eye of law being a finding based on erroneous interpretation and improper appreciation of the evidence and the ld. Trial Judge has wrongly observed that presumption in the present case has not been rebutted to the satisfaction of the Court. On the contrary, the clinching circumstances say that this is a case where the ld. Trial Judge ought not to have drawn any presumption because alleged acceptance of the amount given by the complainant was mainly to recover the octroi fees. There was no reason to demand Rs.20/ more nor there was any necessity for the complainant to give Rs.20/ more when receipt of Rs.60/ was practically prepared and Form:F was also ready with the figure of the value of the goods. So, this is a case where the presumption could not have been drawn, has been drawn. Even if it is accepted that there is a scope to raise presumption against the accused, then also, there are

ample circumstances and facts situation which are sufficient to rebut such presumption on the principles of preponderance of probabilities.

28. For short, there is merit in the present appeal and present appeal requires to be allowed. Hence, appeal is allowed. The impugned judgment and order of conviction and sentence dated 22.03.1993 passed by ld. Special Judge, Ahmedabad in Special Criminal Case No.8/1990 convicting and sentencing the appellants accused for the offences punishable under The Prevention of Corruption Act, is hereby quashed and set aside. Both the appellants accused are hereby held not guilty and are hereby acquitted from the offences for which they have been convicted and sentenced under the impugned judgment. Unfortunately, both the accused have died pending the final hearing of the present criminal appeal, but the heirs of the respective appellants accused have been permitted to continue with the present appeal. So, at least the suing heirs of the respective deceased appellants accused would feel satisfied that ultimately the justice has reached to their door steps. Fine paid by the appellants accused, be refunded to the heirs of the deceased appellants viz. firstly to the widows of the deceased appellants accused and in absence of widows, the fine should be refunded to the appellants who have continued with the present appeal proceedings, on proper

identification. There is no need to pass order as to discharge of bail-bonds as both the accused have expired.

[C.K. BUCH, J]

*rawal